

## **Pennsylvania Local Government Commission Act 47 Task Force Act 47 Subcommittee**

Comments of AFSCME Council 13, Fraternal Order of Police, Pa State Lodge, and Pennsylvania Fire Fighters Association.

On May 2, 2013, the Pennsylvania Local Government Commission convened a Task Force to investigate issues relating to Act 47 and to develop consensus legislation to provide necessary reforms. The Task Force has four subcommittees, each of which is to meet in May and June, 2013 and identify areas where reform might be warranted.

To that end, the staff of the Local Government Commission developed a list of potential issues to be considered by each of the subcommittees. The list of issues for the Act 47 Subcommittee includes an issue that is of great importance to the 5,000 employees working in Act 47 communities who are represented by AFSCME, the FOP and the IAFF and that is the seemingly unlimited amount of time a municipality can operate under the guise of Act 47. Specifically, the issues of interest identified include the following:

Limit time a municipality may be in Act 47

Amend section 252 of Act 47 to presume that after five years, a municipality is financially secure unless proved otherwise

Provide unions and municipal employees a substantive role in recovery.

Since the enactment of Act 47 in 1987, there are a total of twenty seven (27) municipalities that have been declared distressed. Of that total number, only six (6), or less than 22%, have had that declaration of distress lifted. Of the twenty one (21) municipalities that are currently declared distressed, over 57% or 12 municipalities have been under Act 47 status for more than ten years. In fact, ten (10) of the twenty one (21) municipalities currently under Act 47 have been declared distressed for more than twenty years! One municipality, Johnstown, is operating under its 5<sup>TH</sup> Amended Recovery Plan. Certainly, this was never intended by the General Assembly when it enacted Act 47 in 1987. And, notwithstanding repeated calls to amend Act 47 to address this situation, the problem remains unabated. Therefore, AFSCME, the FOP and the IAFF enthusiastically recommend that Act 47 be amended to address this problem.

Under current legislation, there are only two means of coming out of distress: either the municipality or the Secretary of the Department of Community and Economic Development may seek a hearing to determine if the municipality is no longer financially distressed, after which, the Secretary makes that determination. In making this determination, the Secretary must consider four factors:

1. Whether the monthly reports submitted by the Plan Coordinator to DCED indicate that termination of the status of distress is appropriate;
2. Whether the municipality's accrued deficits have been eliminated;
3. Whether the obligations issued to finance all or part of the municipality's deficit has been retired; and
4. Whether the municipality's audited financial statements show that it has operated for at least one year with a positive fund balance.

53 P.S. §11701.253. The fact that only six municipalities have had distress determinations rescinded gives reason to believe that the current scheme is not effective. In the most recent Act 47 case considered by the Pennsylvania Supreme Court, Justice Eakin commented in a concurring opinion on the necessity for a mechanism to force cities out of distress status:

During argument of this case, counsel candidly acknowledged that of approximately 25 cities that have "entered" Act 47 and its protections, only a handful have recovered to the point of leaving the protection of Act 47. The remaining cities have apparently found a home there; Scranton has been there nearly 20 years. I do not propose to fault the cities or their leaders for this condition, the crutch like aid of Act 47 can understandably lead to dependence, and extrication from a state of dependence can be difficult.

City of Scranton v. IAFF Lodge 60, 29 A.3d. 773 (Pa. 2011).

In order to provide an incentive to everyone involved to do what is necessary to bring the municipality out of fiscal distress, we suggest establishing a presumption that after five years of distress, the municipality should be financially secure. Specifically, we suggest that section 253 of the statute be amended to provide that on the fifth anniversary of the declaration of distress, the municipality would automatically come out of distress status unless the municipality could demonstrate that it is still distressed. In order to meet its burden, the standard the municipality should be required to meet is the same standard necessary to trigger distress status in the first place. In this way, those municipalities that continue to struggle despite their best efforts to return to fiscal health could continue benefiting from the state oversight and assistance. However, those that are no longer in distress but which nevertheless have declined to seek a determination to that effect would be required to retake responsibility for their future, rather than continuing to depend on the Commonwealth.

An alternative would be to allow an interested party, such as a labor union, to petition the Court of Common Pleas to remove a municipality from distressed status after five years have elapsed if it does not happen automatically. In such an instance, we recommend that the burden would be on the municipality to establish why the distressed status should continue.

Public employees who work for distressed municipalities have undergone significant diminishment of their rights to bargain over wages, hours and terms and conditions of employment. Certainly, there are municipalities in Pennsylvania that have experienced severe financial distress and as a result, employees and the Unions that represent those employees, have shared in the sacrifices those communities have had to endure. To sanction and permit that sacrifice to continue without any limitations is fundamentally unfair and needs to be changed.

AFSCME, the FOP and the IAFF remain committed to working with the Task Force in its review and evaluation of Act 47. We welcome a robust debate on the changes we have proposed and are prepared to answer any questions you may have.